Supreme Court, U.S.
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No. 95-1269

In The

Supreme Court of the United States

October Term, 1995

STACEY ELAINE WODARSKI,

Petitioner,

vs.

AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the United States Court of Appeals err by declining to certify a question of law to the Oklahoma Supreme Court when the court acknowledged its obligation to apply Oklahoma law, considered relevant principles of Oklahoma law and concluded that certification was not necessary in this case?

2. Did the United States Court of Appeals err by affirming a judgment of the United States District Court for the Northern District of Oklahoma, holding that no coverage existed under a specific policy of Commercial General Liability Insurance for a default judgment awarding damages for assault and battery, sexual harassment and intentional infliction of emotional distress, where, in obtaining judgment, petitioner alleged and testified to the use of threats to her employment to obtain "forced sex" from her and equated the intentional conduct of her immediate supervisor with the intentional conduct of her employer?

LIST OF PARTIES

Petitioner, Stacey Elaine Wodarski, whose name appears in the style of this case, was a Defendant in the underlying action before the United States District Court for the Northern District of Oklahoma, and Appellant before the United States Court of Appeals for the Tenth Circuit. Additional Defendants, not appearing in the style of this action included Lloyds Property Management Corp., a Delaware Corporation; Switlyk Properties & Limited Partnership, a New Jersey Corporation; and David Zarecki, an individual.

Respondent, American Manufacturers Mutual Insurance Company was the Plaintiff in the underlying action before the United States District Court for the Northern District of Oklahoma, and Appellee before the United States Court of Appeals for the Tenth Circuit. Pursuant to Supreme Court Rule 29.6, Respondent states that it is an Illinois mutual insurance company and is one of the Kemper National Insurance Companies. The other Kemper National Insurance Companies are American Motorists Insurance Companies, Lumbermens Mutual Casualty Company and American Protection Insurance Company.

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STATEMENT OF THE CASE

Respondent, American Manufacturers Mutual Insurance Company (hereinafter "American") obtained judgment from the United States District Court for the Northern District of Oklahoma holding that there was no coverage under a specific policy of Commercial General Liability insurance for a default judgment Petitioner Stacey Elaine Wodarski (hereinafter "Wodarski") obtained in the District Court of Tulsa County, State of Oklahoma against David Zarecki (hereinafter "Zarecki") and Lloyds Property Management Corp., (hereinafter "Lloyds"). The United States Court of Appeals for the Tenth Circuit affirmed the judgment of the United States District Court for the Northern District of Oklahoma. Wodarski has petitioned this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

Lloyds was a property management corporation which operated several residential and commercial properties and a construction company in the area of Tulsa, Oklahoma. Zarecki was regional manager for Lloyds, which placed him in a superior position to property managers for residential apartments maintained by Lloyds. In effect, Zarecki was Lloyds in Tulsa.

Following an interview with Zarecki, Wodarski was hired in April, 1988, as property manager for an apartment complex owned by Lloyds in Tulsa. Wodarski received a salary plus an apartment and a bonus for timely collection of rents. Wodarski testified that twice during April, 1988, Zarecki threatened Wodarski with the loss of her job if she did not have sexual relations with him. In June, 1988, Wodarski discovered she was pregnant, but Zarecki refused to acknowledge that he was responsible. Wodarski was laid off from her position in October, 1988; she did not keep her apartment although she was allowed the use of a smaller apartment for three months.

Wodarski's child was born January 1, 1989; in proceedings not related to this appeal, the District Court of Tulsa County determined that Zarecki was the natural father of Wodarski's child.

Wodarski was hired back as a property manager in June, 1989, although she was again fired that same month.

Wodarski commenced an action against Zarecki and Lloyds in the United States District Court for the Northern District of Oklahoma on July 11, 1990; that action was later dismissed. Wodarski then commenced a new action in the District Court of Tulsa County, State of Oklahoma; Wodarski obtained default judgment against Lloyds and Zarecki in that action. *See* Petitioner's Appendix pp. 17a - 18a, Order, *Wodarski v. Lloyds Property Management Corp.*, Docket No. CJ-92-0389 (Tulsa County, Okla., October 23, 1992). Wodarski obtained default judgment against Lloyds and Zarecki for sexual harassment, assault and battery, and intentional infliction of emotional distress or outrage. On September 29, 1992, a hearing was held in the District Court of Tulsa County at which time Wodarski offered her own testimony and also introduced as an exhibit a report of her examining psychologist. Wodarski testified to the intentional acts of Zarecki in forcing sex upon her under threat of loss of her employment, and equated the intentional acts of Zarecki with the intentional acts of Lloyds.

American had issued a policy of Commercial General Liability Insurance to Switlyk Properties and Limited Partnerships (hereinafter "Switlyk") and Lloyds as named insureds. The underlying litigation was commenced in the United States District Court for the Northern District of Oklahoma; American, as Plaintiff, sought a declaration that no coverage exited under that policy for the default judgment obtained by Wodarski against Lloyds and Zarecki. Named as

Defendants were Wodarski, Lloyds, Switlyk, and Zarecki. Only Wodarski actively litigated the underlying action. American alleged, on the one hand, that under the terms of the policy, no coverage was available for the default judgment obtained by Wodarski, and, on the other hand, that American was relieved of any obligation to pay by reason of the insured's failure to provide timely notice of the claims and litigation, or to cooperate. The district court directed the parties to file Cross Motions for Summary Judgment on the coverage issue, holding in abeyance for future briefing, if necessary, the issue of the insured's failure to comply with policy conditions.

Following a consideration of the briefing submitted by the parties on Cross Motions for Summary Judgment on the coverage issue, the United States District Court for the Northern District of Oklahoma entered its Judgment and Order in favor of American on two grounds. Petitioner's Appendix, pp. 8a, 9a-16a. First, the court found that there was no accidental "occurrence" so as to fall within the insuring agreement, because the actions of Lloyds and Zarecki were intentional. Secondly, and in the alternative, the court found that an exclusion prohibiting coverage for injury caused by one employee on another also prevented coverage.

Wodarski appealed to the United States Court of Appeals for the Tenth Circuit, which affirmed holding there was no "accidental occurrence"; the Appellate Court did not address the district court's alternative holding based upon the employee exclusion.

The American policy issued to Switlyk and Lloyds contained numerous kinds of insurance, many of which have no application to the Wodarski judgment. The parties stipulated to the forms that should be considered to determine the coverage issue. These forms govern General Liability Coverage,

including Commercial General Liability Coverage for bodily injury and for personal injury and Comprehensive Judgment Liability Insurance for bodily injury. These forms were provided to the District Court, and were also included in Appellant's Appendix on appeal. The insuring agreement contained a promise to "pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury'. . ." The insuring agreement specified that the "'bodily injury' . . . was caused by an 'occurrence'". The term occurrence is defined three places in the policy, and is always defined as an "accident". The definition of "occurrence" contained in the General Liability Coverage Section and in the Commercial General Liability Coverage Part Additional Provisions and Conditions also included in the definition of "occurrence" that the "bodily injury" be "neither expected nor intended from the standpoint of the insured".

The "personal injury" coverage was limited to specific offenses. None of those offenses were included in the default judgment Wodarski obtained from the District Court of Tulsa County.

In addition to the foregoing provisions which limited the basic grant of coverage under the insuring agreement, the policy also contained exclusions specifying that the insurance did not apply to "'bodily injury' . . . expected or intended from the standpoint of the insured", or to "'bodily injury to . . . an employee of the insured arising out of and in the course of employment by the insured; . . ."

REASONS FOR DENYING THE WRIT

Although Petitioner Wodarski states two "questions presented for review" on page i of the Petition, her argument is that the United States Court of Appeals should have certified a

question of law to the Oklahoma Supreme Court. Respondent American submits that this is not an appropriate reason for granting certiorari for three reasons. First, the United States Court of Appeals was under no obligation to certify a question of law to the Oklahoma Supreme Court; its failure to do so cannot, under any circumstances, rise even to the level of an "abuse of discretion. Secondly, certification in this case was unnecessary because the distinction argued by Wodarski is irrelevant under the record in this case. Thirdly, the question Wodarski asked to have certified did not accurately reflect the issues as raised by the facts and the law in this case.

Wodarski obtained default judgment from the District Court of Tulsa County on causes of action for sexual harassment, assault and battery and intentional infliction of emotional distress. Wodarski's pleadings and testimony equated the intentional acts of Zarecki with the intentional acts of Lloyds.

Wodarski testified that Zarecki used his position as regional property manager and her superior with Lloyds to obtain "forced sex" from her. Wodarski testified that the sexual relations were "against her will" and that she had been raped by Lloyds. *See* Aplt. App. ex. 8 at pp. 35, 40, 45; Transcript of Hearing, September 29, 1992, pp. 9, 14, 19. Lloyds and Zarecki threatened her with loss of her employment, income and apartment, if she did not submit. Wodarski testified that she was "frightened of Mr. Zarecki", that he had a "violent nature", that he was "a very intimidating man" who actually bit Wodarski on her body and boasted that "at one time he had possibly killed a woman". Aplt. App. Ex. 8 p. 64; Transcript, p. 38. Based upon this testimony, the District Court of Tulsa County entered Default Judgment in favor of Wodarski on her claims for sexual harassment, assault and battery and intentional infliction of emotional distress. The record in this case, as created by Wodarski herself in the District Court of Tulsa County, does not permit a distinction between an intent to perform an act, and an intent to cause injury.

The use of threats, even if limited to employment, implies an intent to harm. *See* Black's Law Dictionary, 1327 (5th Ed. 1979) ("threat" defined in terms "of intention or determination to inflict punishment, loss, or pain on another, or to injure another by the commission of some unlawful act"); *See also, Jespersen v. U.S.F.&G.*, 131 N.H. 257, 261, 551 A.2d 530, 532 (1988) ("intentional act" of firing person from his position as manager and depriving him of his residence, benefits and salary identified as "inherently injurious").

Before entering Default Judgment, the District Court of Tulsa County was careful to make sure that actual threats were directed by Lloyds and Zarecki against Wodarski:

> THE COURT: Okay. The assault and battery that you're complaining on your person that ended in your termination, you've told the Court in your Complaint that the reason you had sex is because he was threatening you with termination of employment if you did not have sex with him; is that what you're telling me happened?
>
> THE WITNESS: Yes, ma'am.
>
> THE COURT: Okay. And that threat continued, and that is the reason that on two occasions you agreed to have sex?
>
> THE WITNESS: Yes.

Aplt. App. ex. 8 at p. 50; Transcript p. 24. Wodarski equated the intentional acts of Zarecki with those of Lloyds.

> Q. And, you, believed throughout this that

> because of his role at Lloyd's Properties it was not simply Mr. Zarecki that was doing this to you, you were actually being raped by Lloyd's Properties as well since it acts through its agents?
>
> A. Yes.

Aplt. App. ex. 8 at p. 45; Transcript p. 19.

> Q. Was it your impression that when he [Zarecki] acted, that was the company [Lloyds] acting?
>
> A. Yes.

Aplt. App. ex. 8 at p. 35; Transcript p. 9. Wodarski constantly used the plural term "Defendants" in her state court pleadings to underscore that the allegations were directly equally against Zarecki and Lloyds and that she "was subjected to continual sexual harassment by the Defendants while she was employed by them". Aplt. App. ex. 7 p. 18; Petition, *Wodarski v. Lloyds & Zarecki*, Paragraph No. 20 p. 4.

The District Court of Tulsa County entered judgment against Zarecki and Lloyds finding that they had perpetrated an assault and battery upon her. By definition, an "assault" requires an intent to cause fear. Restatement (2d) Torts § 32. In *Vaughn v. Baxter*, 488 P.2d 1234 (Okla. 1971), the Oklahoma Supreme Court held that a chase in an automobile "became an assault with a dangerous instrument if Baxter intended to cause fright and terror in the occupants of the Smith car." *Id.* at 1237. Even Wodarski's case, *Aetna Life & Casualty Co. v. Barthelemy*, 33 F.3d 189 (3rd Cir. 1994) held that a "state court battery count is excluded from coverage because, by definition, the tort of

battery requires proof of an intent to cause a harmful or an offensive contact". *Id.* at 191, citing Restatement (2d) Torts § 13. Therefore, the judgment of the District Court of Tulsa County was that Zarecki and Lloyds intended to cause harm to Wodarski when they assaulted and battered her.

Wodarski also recovered under the theory of intentional infliction of emotional distress, which requires a finding of conduct so extreme and outrageous as to be utterly intolerable in a civilized community. *Breeden v. League Services Corp.*, 575 P. 2d 1374, 1378 (Okla. 1978). To recover under this theory, a defendant's conduct must show an intent to "intimidate or otherwise coerce" the plaintiff. *Haynes v. South Community Hospital Management*, 793 P.2d 303, 307 (Okla. Ct. App. 1990) . By entering judgment against Zarecki and Lloyds on this cause of action, the District Court of Tulsa County held that Zarecki and Lloyds intended to cause severe emotional distress in Wodarski.

Moreover, "forced sex", "unwanted sex" and "sex against her will" are the very essence of the injury in her sexual harassment claim. By finding that Zarecki and Lloyds sexually harassed Wodarski, the court found that Zarecki and Lloyds intended that she be harassed.

Petitioner Wodarski's argument is based upon a presumed distinction under Oklahoma law between "an intentional act and the intent to commit the specific injury. . . ." *See* Petition for Writ of Certiorari at p. 5. However, that distinction is beside the point under the record in this case; the record Wodarski created in the District Court of Tulsa County established that both Lloyds and Zarecki had the intent necessary to assault and batter her, had the intent necessary inflict severe emotional distress upon her, and had the intent necessary to sexually harass her. Under the record in this case, the issue addressed by Wodarski reduces to academic

speculation irrelevant to the matter before the Court. In affirming the district court's determination of no coverage, the Tenth Circuit Court of Appeals found:

> Here, Ms. Wodarski's state court petition against Mr. Zarecki and Lloyds specifically alleged that their actions "intentionally caused the Plaintiff severe emotional distress." Appellant's App. at 19. This is the only bodily injury she claims to have suffered. *Id.* at 57-58. The record is devoid of any evidence contradicting this allegation and the state court granted a default judgment on the claim. Thus, we conclude the record establishes that Mr. Zarecki and Lloyds did intent to cause bodily injury that Ms. Wodarski suffered.

Petitioner's Appendix at p. 7a. The Tenth Circuit concluded that there was no issue to be certified to the Oklahoma Supreme Court:

> In light of our conclusion, we see no need to certify a question of state law to the Oklahoma courts.

Id. In a footnote, the Tenth Circuit also concluded that the United States District Court for the Northern District of Oklahoma did not err in declining to certify a question of law. Because Lloyds and Zarecki intended both the acts and the injury, the arguments advanced by Wodarski cannot justify granting a Writ of Certiorari in this case.

Both the United States Court of Appeals for the Tenth Circuit and the United States District Court for the Northern

District of Oklahoma were aware that, as federal courts sitting in diversity, the applicable state law must govern resolution of the case. Petitioner's Appendix at pp. 4a, 15a. Both courts carefully analyzed relevant precedents addressing Oklahoma law, and entered judgment in conformity therewith.

In support of her purported distinction under Oklahoma law, Wodarski relies principally upon *Lumbermens Mutual Insurance Co. v. Blackburn*, 477 P.2d 62 (Okla. 1970). *See* Petition for Writ of Certiorari, at p. 5. In *Blackburn*, the court relied upon a stipulation that the intentional acts of the defendant "were without any intent to injury plaintiffs. . . ." *Id.* at 64. No such stipulation appears in the present case, and the possibility is eliminated by Wodarski's own testimony and evidence of the "rape" and "forced sex" by Lloyds and Zarecki. In *Blackburn*, the underlying event occurred as follows:

> Timothy S. Blackburn, minor son of W.S. Blackburn, received a serious injury to his head from a rock, clod, or other hard object *thrown in his direction* allegedly by one of five of his male schoolmates, while attending a Tulsa Junior High School.

Id. at 63 (emphasis added). The emphasized portion indicates that the hard object was "thrown in his direction" but does not suggest any intent to throw the hard object *at* Blackburn or to *hit* Blackburn, let alone to cause him injury. There was no suggestion that Blackburn, (or anyone else) was the intended target of the object thrown in his general direction. In stark contrast, it is clear that Wodarski was the intended target of the intentional assault by Lloyds and Zarecki.

Wodarski cites another Oklahoma case, *Republic National Life Insurance Company v. Johnson*, 317 P.2d 258 (Okla. 1957).

Petition for Writ of Certiorari at pp. 4, 6. In *Republic v. Johnson*, the issue was whether an injury from a gunshot was "accidental" or not. The court quoted several definitions of "accident" and "accidental":

> Accident. An event that takes place without one's foresight or expectation; an undesigned, sudden and unexpected event, chance, contingency.
>
> Accidental. Happening by chance or unexpectedly, undesigned; unintentional; unforeseen or unpremeditated.
>
> * * *
>
> To impart an accidental character to the means of death, the occurrence relied upon must be "unexpected, unforeseen, and involuntary".

317 P.2d at 261-262 (citations omitted). The Oklahoma Supreme Court held that for an injury to be "accidental" it must be unexpected from the standpoint of the insured. In the instant case, the assaults, battery, severe emotional distress, and sexual harassment perpetrated upon Wodarski, and for which she recovered judgment, were not unexpected from the standpoint of Zarecki and Lloyds.

Wodarski also cites, without discussing *Willard v. Kelley*, 803 P.2d 1124 (Okla. 1990). Petition for Writ of Certiorari at pp. 4, 6. In *Willard v. Kelley*, the Oklahoma Supreme Court held that whether an event is an "accident" must be viewed from the insured's perspective. 803 P.2d at 1128-29 ("in the eyes of the insured"). The insured in that case was a policeman, who was seeking coverage under his own uninsured motorist policy. The court concluded that when a tortfeasor stopped and shot at the

policeman, the event was unexpected and therefore an accident, in the policeman's eyes. However, the court specifically observed:

> While public liability insurance generally does not protect the insured *who intentionally inflicts harm upon another* U/M and medical payments coverage *afford indemnity to the insured for harm caused by another.*

Id. at 1129 (emphasis original). The Oklahoma Supreme Court concluded that there would be:

> [P]rotection for harm that is *unprovoked, unforeseen, and unintended on the part of the insured*. The objective "reasonable person" standard is to be applied in appraising the injurious event's character from the insured's perspective.

Id. at 1129 (emphasis original). The use of a "reasonable person" standard precludes requiring proof of "actual subjective intent" as argued by Wodarski. Moreover, Lloyds and Zarecki intended harm when they assaulted and battered Wodarski, intentionally inflicted severe emotional distress upon her, and sexually harassed her.

Lumbermens v. Blackburn, supra, Republic v. Johnson, supra, and *Willard v. Kelley, supra,* are the only cases by an Oklahoma state court cited by Wodarski in her Petition for Writ of Certiorari. It is clear from a review of these authorities that no distinction such as suggested by Wodarski arises under the facts

and record of this case. Therefore, there was absolutely no need for either the Tenth Circuit Court of Appeals or for the United States District Court for the Northern District of Oklahoma to certify a question of law to the Oklahoma Supreme Court; the relevant principles applicable to this case are not unsettled. Moreover, there was no error in either court's application of relevant Oklahoma law to the record in this case.

Contrary to the argument of Wodarski, the holding in *Massachusetts Bay Insurance Co. v. Gordon*, 708 F. Supp. 1232 (W.D. Okla. 1989) is fully in accord with the decisions of the Oklahoma Supreme Court. In *Massachusetts v. Gordon*, the insured assaulted his ex-wife's boyfriend. The insured sought both coverage and a defense for an action brought against him by his victim. The court addressed the coverage question as follows:

> The policy provides, under Coverage E, Personal Liability that, if bodily injury is caused by an "occurrence" to which this coverage applies (emphasis added), Plaintiff will pay damages for which the insured is legally liable, within policy limits, and will also provide a defense to any suit brought against insured. (Policy p. 21). "Occurrence" is defined in the policy as an "accident, including exposure to conditions, which result . . . in bodily injury . . ." (Policy p. 2). Under Coverage F, Medical Payment to Others, Plaintiff promises to pay medical expenses attributable to an accident cause bodily injury. (Policy p. 21). Section II, Exclusions, provides that Coverage E, Personal Liability and Coverage F Medical Payments, do not apply to bodily injury . . . which is expected or intended by the insured. (Policy p. 22).

> Thus, Plaintiff's liability for indemnification of McMichael's liability to Gordon for Gordon's medical payments and for providing a defense to McMichael all turn on whether Gordon's injury was caused by an "occurrence" or "accident" within the meaning of the policy. In addition, coverage is excluded if the injury was "expected or intended" by McMichael.
>
> McMichael argues that the exclusion provision applies only if it is shown that McMichael expected or intended, not merely to assault and batter Gordon, but to inflict the injuries actually inflicted, relying on *Lumbermens Mutual v. Blackburn*, 477 P.2d 62 (Okla. 1970). In *Blackburn*, the Court required that the intention of the person whose act caused the injury be to inflict the injury actually inflicted rather than simply to do the act causing the injury, distinguishing intentional acts from intentional injuries. Id. at 65. However, the homeowner's policy at issue in *Blackburn*, unlike Plaintiff's policy, did not limit coverage to an "occurrence" or "accident" but simply promised to pay all sums for bodily injury for which the insured was legally liable, subject to exclusion for injuries intentionally caused by the insured. Thus, *Blackburn* has no application in determining, in the first instance, whether Gordon's injury falls within the coverage provisions of this policy.

708 F. Supp. at 1233. The court acknowledged the distinction

argued by Wodarski (between intended act and intended injury), but held that the distinction was not relevant to determining whether the injury causing event was an "accident" or "occurrence" as required in the insuring agreement of the specific policy at issue.

The American policy at issue in this case required that the event causing bodily injury be an "occurrence" which was also defined as a "accident". *See* Petition for Writ of Certiorari at p. 5, n. 2. Thus, the issue was not the application of an *exclusion* to limit coverage granted by the insuring agreement, but whether the claim fell within the original grant of coverage in the insuring agreement itself, *i.e.*, whether there was an accidental "occurrence". Therefore, the holding in *Massachusetts v. Gordon,* is not contrary to Oklahoma law, but is instead a proper application of the principles as enunciated by the Oklahoma Supreme Court. Furthermore, in the instant case, both district and appellate courts properly recognized the application of these principles to the instant case. The Tenth Circuit held:

> *Blackburn* does not apply here because AMM's policy limits coverage to an "accident" and the policy in *Blackburn* did not contain such a provision. See, *Massachusetts Bay Ins. Co. v. Gordon*, 708 F. Supp. 1232, 1233 (W.D. Okla. 1989). The issue in this case, as in *Gordon*, is whether the policy applies "in the first instance,". *Id.* Not whether the exclusion for intentionally caused injuries applies.

Petitioner's Appendix at p. 6a. Similarly, the United States District Court for the Northern District of Oklahoma held:

> However, in *Massachusetts Bay Ins. Co. v.*

> *Gordon,* 708 F. Supp. 1232, 1233-34 (W.D. Okla. 1989), the Court further distinguished *Blackburn* by noting the language in the policy before the Oklahoma Supreme Court, did not limit coverage to an "occurrence" or "accident". The court in *Gordon* went on to conclude that if the insured performs a voluntarily act, the natural, usual, and to-be-expected result is not an accident. This Court finds the acts perpetrated against the defendant Wodarski constitute intentional acts and therefore her injuries were not the result of an "occurrence" and are not covered under the policy.

Petitioner's Appendix at pp. 14a-15a. In a footnote, the district court noted that "[m]uch of the 'overwhelming' Oklahoma authority cited by defendant, such as *Lincoln Health & Accident Insurance v. Johnigan,* 147 P. 837 [*sic* 245 P. 837] (Okla. 1926) involves policies which excluded coverage for intentional acts *against* the insured, not on the part of the insured as in the case at bar." Petitioner's Appendix at p. 15a, n. 4 (emphasis original).

In summary, there is no reason to grant a Writ of Certiorari in this case. The purported distinction between intentional act and intentional injury has no application under the facts and record in this case. There could be neither point nor purpose of certifying a question of law which is irrelevant to the issues before the court. Both the United States Court of Appeals for the Tenth Circuit and the United States District Court for the Northern District of Oklahoma properly interpreted and applied relevant state law in resolving the issues before it. Neither court erred in declining to certify an irrelevant issue to the Oklahoma Supreme Court.

CONCLUSION

WHEREFORE, premises considered, the Respondent, American Manufacturers Mutual Insurance Company, prays the Court to deny Petitioner's Petition for Writ of Certiorari. The facts and record as created by Petitioner herself when she obtained default judgment on claims of assault and battery, sexual harassment, and intentional infliction of emotional distress preclude the issues to be raised on certiorari. By entering judgment on those claims, under Petitioner's own pleadings, testimony and evidence, the District Court of Tulsa County, State of Oklahoma, found an intent to cause harm and entered judgment on claims for assault and battery, for intentional infliction of severe emotional distress, and for sexual harassment. The United States District Court for the Northern District of Oklahoma properly held that there was no coverage for these intentionally inflicted injuries under a policy of commercial general liability insurance and that determination was properly affirmed by the United States Court of Appeals for the Tenth Circuit. The judgments of both courts are fully consistent with all applicable principles of Oklahoma law; neither court erred by declining to certify a question of law to the Oklahoma Supreme Court.

Respectfully submitted,

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